

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION,  Plaintiff-Applicant,  v.  BERNARD L. MADOFF INVESTMENT SECURITIES LLC,  Defendant.	Adv. Pro. No. 08-01789 (SMB)  SIPA LIQUIDATION  (Substantively Consolidated)
In re: BERNARD L. MADOFF,  Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,  Plaintiff,  v.  FRANK J. AVELLINO, <i>et al.</i> ,  Defendants.	Adv. Pro. No. 10-05421 (SMB)

**ORDER AUTHORIZING THE DEPOSITION OF  
BERNARD L. MADOFF**

**WHEREAS**, on July 29, 2019, defendants in the above-captioned adversary proceeding (the “Defendants”) filed a letter pursuant to Local Bankruptcy Rule 7007-1(b), to request that the Court schedule a conference to allow Defendants to make a motion under Rule 30(a)(2)(B) of the Federal Rules of Civil Procedure, for an order permitting Defendants to conduct the deposition of Bernard L. Madoff (“Madoff”) (ECF No. 191);

**WHEREAS**, Irving H. Picard, trustee (“Trustee,” together with the Defendants, the “Parties”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa et

seq. (“SIPA”), and the estate of Madoff (collectively, “Debtor”), has consented to the Defendants’ request to depose Madoff;

**WHEREAS**, pursuant to the directive from this Court, the Parties met and conferred in an effort to submit a consensual order establishing the procedure for, and scope of, Madoff’s deposition. The Parties have agreed to the terms set forth in this Order.

**IT IS HEREBY ORDERED THAT:**

1. The deposition of Madoff is authorized subject to the terms and limitations of this Order. The Parties are authorized to inquire about the allegations in the Amended Complaint in the above-captioned adversary proceeding, including, but not limited to, all facts raised by the Amended Complaint and/or related pleadings (the “A&B Deposition Topics”).

2. The following limitations and procedures are imposed on Madoff’s deposition:

A. Except for any counsel that may appear on Madoff’s behalf, only two attorneys for the Trustee may appear at the deposition; only two attorneys for the Defendants may appear (collectively “Authorized Counsel”); no other appearances are authorized.

B. Examination on the A&B Deposition Topics may take place on dates as soon as practicable, but subject to the discretion of the warden of the Federal Correctional Institution located in Butner, North Carolina, as follows:

i. The Defendants’ counsel shall have the opportunity to commence Madoff’s examination at the deposition, Trustee’s counsel shall then have the opportunity to examine Madoff, and the Parties then will have the opportunity respectively, to conduct any additional re-direct or re-cross examinations as they deem necessary; and

ii. The Trustee's counsel shall be permitted to examine Madoff for a total of seven (7) hours and Defendants' counsel shall be permitted to examine Madoff for a total of seven (7) hours; no further questioning is authorized without written leave of court.

C. Authorized Counsel are prohibited, at any point during Madoff's deposition, from asking Madoff any questions beyond the scope of the A&B Deposition Topics, including any questions about Jeffry M. Picower ("Picower"), Capital Growth Company, Decisions Inc., Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, LAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLM Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower P.C., The Picower Foundation, The Picower Institute for Medical Research, The Trust f/b/o Gabrielle H. Picower, and Barbara Picower, individually, as Executor of the Estate of Jeffry M. Picower, as Trustee for The Picower Foundation and as Trustee of the Trust f/b/o Gabrielle H. Picower (collectively, the "Picower Parties") or their agents, or the Picower Parties' BLMIS accounts.

D. To the extent Madoff testifies regarding Picower or the Picower Parties or their BLMIS accounts in responding to questions on any of the A&B Deposition Topics, any information specific to the BLMIS accounts of Picower and/or the Picower Parties shall be redacted whenever practicable, and Authorized Counsel may follow up with questions concerning Picower or the Picower Parties only to the extent that such follow-up questions concerning Picower or the Picower Parties relate directly to the A&B Deposition Topics. Authorized Counsel may not, however, use any testimony by Madoff regarding Picower or the Picower Parties to inquire about any conduct of Picower or the Picower Parties that is not directly related to the A&B Deposition Topics.

E. Absent further order of the Court, the deposition testimony of Madoff and the transcript(s) (the “Transcript” or “Transcripts”) thereof shall not be used by any person or entity for any reason as it relates to the Picower Parties, including, but not limited to, in any pending or future litigation that may be brought against the estate of Picower, the Picower Parties or their agents, or any related person or entity.

F. The Transcripts for each day of Madoff’s deposition shall remain confidential and under seal for twenty-one (21) days after the date that the final Transcript of each day of deposition testimony on the A&B Deposition Topics is provided to Authorized Counsel, the Picower Parties, and the Securities Investor Protection Corporation (“SIPC”), or, if any party seeks to seal, strike or redact any portion of the Transcripts within the 21-day period, then solely as to that portion of the Transcript, the day after a final, non- appealable order is entered on such motion(s) (the “Confidentiality Period”). Each of the Transcripts shall automatically be re-designated as not confidential when the Confidentiality Period for each of the Transcripts expires, subject to any sealing, striking or redactions that the Court may have ordered.

G. During the Confidentiality Period, the Transcripts and contents of Madoff’s deposition may not be disclosed, except to Authorized Counsel and their retained experts, if any, the Picower Parties, and SIPC, all of whom, including the experts, shall maintain the confidentiality of the Transcripts and their contents, and all of whom may file with the Court, under seal, requests to strike and/or redact any questions or answers in the Transcripts, including any testimony concerning Picower, the Picower Parties or their agents or related parties, or any BLMIS accounts held by or on behalf of any of the Picower Parties.

H. Any requests on motions to strike and/or redact any part of Madoff’s deposition Transcripts, and any responses thereto, shall be filed under seal pursuant to Section

III.C of this Court's Procedures for the Filing, Signing and Verification of Documents by Electronic Means, promulgated under Local Rule 5005-2, shall be served on Authorized Counsel, the Picower Parties, and SIPC at the time of filing under seal, and shall remain confidential during the Confidentiality Period.

I. In the event that Authorized Counsel, the Picower Parties, or SIPC receive any request, subpoena or other process seeking disclosure of Madoff's deposition Transcripts or information related to Madoff's testimony during the Confidentiality Period, such counsel, within three (3) business days thereof, shall notify the Court and counsel for the Trustee, the Defendants, the Picower Parties, and SIPC, of the subpoena or other request, and shall await direction from the Court before responding to such request, subpoena, or other process.

J. After Madoff's deposition on the A&B Deposition Topics is completed, no further testimony may be taken from Madoff without further order of the Court.

K. The Court, in its discretion, may impose sanctions on any person or entity that violates any provision of this Order.

L. This Court shall retain exclusive jurisdiction over the enforcement, implementation, and interpretation of this Order.

Dated: New York, New York  
**September 5, 2019**

**/s/ STUART M. BERNSTEIN**  
**Hon. Stuart M. Bernstein**  
**United States Bankruptcy Judge**